

and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 15, 1969: Yeas 141, Nays 0; and that the House concurred in Senate amendments on May 23, 1969, by a non-record vote; passed subject to the provisions of Article III, Section 49a, Constitution of the State of Texas; passed by the Senate, as amended, on May 22, 1969: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a, Constitution of the State of Texas.

Approved June 21, 1969.

Effective Sept. 1, 1969, 90 days after date of adjournment.

PRIVATE EMPLOYMENT AGENCY REGULATORY BOARD

CHAPTER 871

H. B. No. 169

An Act creating the Texas Private Employment Agency Regulatory Board; giving the board certain duties and responsibilities; establishing certain requirements for the licensing of private employment agencies and private employment agency operators; amending Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a—6, Vernon's Texas Civil Statutes); providing for severability; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a—6, Vernon's Texas Civil Statutes), is amended ⁸¹ to read as follows:

Definitions as used in the act

"Section 1. (a) The term 'person' means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

"(b) 'Fee' means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by an employment agency from any person seeking employment or employers in payment for any service, either directly or indirectly.

"(c) 'Employer' means any person employing or seeking to employ any employee.

"(d) 'Applicant' means any person engaging the services of a private employment agency for the purpose of securing employment or any person placed by a private employment agency with an employer.

"(e) 'Private Employment Agency' means any person, place or establishment within this state who for a fee or without a fee offers or attempts, either directly or indirectly, to procure employment for employees

81. Vernon's Ann.Civ.St. art. 5221a—6, §§
1-18.

or procures or attempts to procure employees for employers, except as hereinafter exempted from the provisions hereof.

"(f) 'Commissioner' shall mean the Commissioner of the Bureau of Labor Statistics, and he shall administer and enforce the provisions of this Act and the rules and regulations promulgated by the board and in all matters relating to the enforcement of this Act, shall be guided by the instructions and decisions of the board.

"(g) 'Deputy or inspector' shall mean any person who is duly authorized by the commissioner to act in that capacity.

"(h) 'Operator' shall mean the individual or individuals who have the responsibility for the day-to-day management, supervision and conduct of a private employment agency; and an operator may manage more than one office.

"(i) 'Board' shall mean the Texas Private Employment Agency Regulatory Board.

Exceptions

"Sec. 2. The provisions of this Act shall not apply to agencies engaged solely in the procurement of employment for public school teachers and administrators; the provisions of this Act shall not apply to any employment agency established and operated by this state, the United States government, or any municipal government of this state; the provisions of this Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within or without this state, nor to any common carrier operating in this state who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this state, provided that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly is exacted from a worker, then said employer is deemed a private employment agency and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this state where no fee is charged or collected, either directly or indirectly for employment given; the provisions of this Act shall not apply to persons acting for members of their own family. The provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency, nor to any veterans' association or organization or labor union; nor to any nurses' organization operated and conducted by registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public; the provisions of this Act shall not apply to a labor agency engaged exclusively in the business of procuring common laborers or agricultural workers for employers or any person engaged exclusively in the business of procuring or attempting to procure jobs for common laborers or agricultural workers; the provisions of this Act shall not apply to any person conducting a business which consists of employing individuals directly for the purpose of furnishing part-time or temporary help to others.

Creation and composition of the board

"Sec. 3. (a) The Texas Private Employment Agency Regulatory Board is hereby created. Its main office is in Austin, Texas, at the location of the office of the commissioner.

"(b) The board is composed of nine members appointed by the governor with the advice and consent of the Senate.

"(c) To be qualified for appointment as a member of the board, a person must be a citizen of the United States and a resident of Texas and shall have been actively engaged in the private employment agency business as an operator owning an interest in a private employment agency in the State of Texas for a period of five years next preceding the date of his appointment.

"(d) No more than two members of the board may be from any one senatorial district and no more than two members of the board may be from the same county. Further, the board shall be composed of three members who at the time of their appointment operate an agency in which not more than eight persons are engaged in the operations thereof and such agency is not, directly or indirectly, a part of a multiple-office or franchise operation; three members who at the time of their appointment operate an agency in which more than eight persons but not more than 25 persons are engaged in the operation thereof and such agency is not, directly or indirectly, a part of a multiple-office or franchise operation; three members who at the time of their appointment operate an agency which is a single-office operation in which more than 25 persons are engaged in the operation thereof, or is either a part of a multiple-office operation or of a franchise operation, but not more than one person from any one such multiple-office or franchise operation may serve on the board simultaneously. For the purpose of this section agencies belonging or subscribing to a referral system shall not be considered as a multiple-office or franchise operation because of such membership in or subscription to such referral service.

"(e) Except for the initial appointees, the members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three for terms expiring on January 31, 1971, three for terms expiring on January 31, 1973, and three for terms expiring on January 31, 1975. The governor shall make the appointments in such a way that the term of one member from each of the three categories described in Subsection (d) of this section expires every two years. If any member of the board ceases to own an interest in a private employment agency, he automatically vacates his office, which shall be filled by appointment as in the case of other vacancies.

"(f) Members of the board qualify by taking the constitutional oath of office before an officer authorized to administer oaths in this state. When a board member presents his oath of office and the certificate of his appointment to the secretary of state, the secretary of state shall issue a commission to him. The commission from the secretary of state is evidence of authority to act as a member of the board.

"(g) The board shall formally elect a chairman and secretary-treasurer from its members. The board may adopt rules necessary for the orderly conduct of its business.

"(h) Six members of the board constitute a quorum for the transaction of business and may act for the board. The board shall adopt a seal. The board shall prepare and preserve minutes and other records of its proceedings and action.

"(i) Members of the board do not receive a salary for their services but each member is entitled to \$25 for each day spent in attending meetings of the board, including time spent in travel to and from the meetings, not to exceed \$500 a year. Members of the board are also entitled to be reimbursed for travel and other necessary expenses incurred while performing their official duties if the expenses are evidenced by voucher approved by the chairman or secretary-treasurer of the board.

**Applications for license to maintain and operate a
private employment agency**

"Sec. 4. Applications for license to maintain and operate a private employment agency shall be made by a licensed operator and shall be accompanied by a fee of \$150. Separate applications shall be made for each unit or location where a private employment agency is to be operated and for which a license is sought. Each license shall expire on August 31 of each year and shall be renewable as hereinafter provided. The commissioner shall allow credit for any unused portion of the licenses outstanding on the effective date hereof.

Application for license as an operator

"Sec. 5. (a) Application for a license as an operator may be made by and shall be issued to any person who (1) is a citizen of the United States, (2) has been a resident of the State of Texas for one year next preceding the filing of said application, (3) is of good moral character, (4) has never been convicted of an offense involving moral turpitude, and (5) successfully passes the examination prescribed herein.

"(b) The application shall be accompanied by the annual license fee of \$15 plus an examination fee of \$25. In the event the examination is not passed, the \$15 fee shall be refunded but the \$25 shall not. All operators' licenses shall expire on August 31st of each year.

Application forms

"Sec. 6. All applications for a license hereunder shall be made upon forms provided by the Bureau of Labor Statistics and shall state such information as the board and the commissioner may require, which shall include affirmative evidence of ability to comply with reasonable standards, rules, and regulations as are lawfully prescribed hereunder.

Renewal of licenses

"Sec. 7. (a) A private employment agency license may be renewed annually by the operator thereof filing an application upon the forms provided and the payment of a \$150 renewal fee.

"(b) An operator's license may be renewed annually by the operator by the filing of application for renewal upon forms provided for such renewal and the payment of \$15 renewal fee.

Bond

"Sec. 8. Each applicant for a private employment agency license or renewal shall, before such license is issued, make and file with the com-

missioner a good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of \$5,000 payable to the State of Texas; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions, and requirements of this Act, and that the principal, his agents or representatives will not make any false representation or statement to any person soliciting assistance from him for employees or employment, or solicited by him to accept employment. Said bond is to further recite that any person injured or aggrieved by any false or fraudulent statement of such agent, his subagent or representatives, or any violation of any provision of this Act thereof by such agent, subagent or representative, shall be entitled to bring suit thereon. Provided, however, that one such bond shall suffice where the same person shall make application for more than one office.

Examinations

"Sec. 9. (a) The examination for an operator's license shall be prepared by the board and shall cover the laws and regulations relating to the operations of a private employment agency, the laws relating to discrimination in employment and related to labor legislation, and general matters related to the management and operation of a private employment agency. The questions for such examination shall be taken from a list of questions which shall have been furnished to the individual taking such examination together with a form of acceptable answers thereto upon request.

"(b) All examinations required by this Act shall be given at such times and places as the board may direct, provided, however, such examinations shall be given at least every 60 days.

Processing of applications

"Sec. 10. The commissioner, upon receiving an application for any type of license, shall inspect or cause to be inspected said application and shall make such investigation as may be necessary to determine that the applicant is qualified; provided, however, that all applications must be accepted and approved, or a date set for examination, or rejected, as the case may be, within 30 days of the date of filing thereof. In the event of examination being necessary, the license shall be issued or denied within 30 days of the taking of said examination. Any applicant, upon request to the commissioner, may see his examination papers within 90 days immediately following the announcement of the date a license has been denied to him as a result of his having failed his examination.

Grandfather clause

"Sec. 11. All private employment agencies in business and operating and holding a license as a private employment agent on September 1, 1969, shall be entitled to be licensed under this Act, and all individuals functioning as an operator of a private employment agency holding a license from the State of Texas on September 1, 1969, shall be entitled to receive a license as an operator under this Act, upon filing an application before December 1, 1969, upon a form provided, and upon payment of the fee as prescribed herein, without meeting the examination requirements of Section 5 hereof.

Inspection

"Sec. 12. The commissioner, his deputies or inspectors, are hereby authorized and directed to enforce the provisions of this Act and the rules and regulations promulgated by the board.

Conduct

"Sec. 13. (a) Employment agencies licensed under this act shall not:

"(1) impose any fees for the registration of applicants for employment or any fee of applicants except for furnishing of employment obtained directly through the efforts of such agency;

"(2) engage or attempt to engage in the splitting or sharing of fees with an employer, an agent or other employee of an employer, or other person to whom employment service has been furnished or any other person not authorized to charge a fee under this act;

"(3) charge a fee greater than that authorized and promulgated by the Board;

"(4) make, give, or cause to be made or given to any applicant for employees or employment any false promise, misrepresentation or inaccurate or misleading statement or information if such agency had knowledge or should have had knowledge of such falsity, misrepresentation, or inaccurate or misleading statement or information;

"(5) procure or attempt to procure the discharge of any person from his employment;

"(6) unduly influence an employee to quit his employment for the purpose of obtaining other employment through such agency;

"(7) require applicants for employment to subscribe to any publication or incidental service or contribute to the cost of advertising;

"(8) refer any person to employment deleterious to health or morals if the agency had knowledge or should have had knowledge of such conditions;

"(9) refer any employee or applicant for employment to a place where a strike or lockout exists without furnishing such employee or applicant with a written statement as to the existence of such strike or lockout, if the agency had knowledge or should have had knowledge of such facts or conditions, a copy of which statement signed by the employee or applicant shall be kept on file for one year after the date thereof;

"(10) make any referral to an employment or occupation prohibited by law;

"(11) refer any applicant for employment except upon a valid job order therefor;

"(12) make or cause to be made or use any name, sign, or advertising device bearing a name which may be similar to or reasonably be confused with the name of a government agency or which is false or misleading relating to their employment agency;

"(13) knowingly and willfully violate any law of this state or the United States.

"(b) Employment agencies licensed under this act shall:

"(1) include their agency name and the address of such agency in all advertising;

"(2) keep, maintain and permit inspection thereof, adequate records to evidence compliance with this law and all other laws of this state and of the United States;

"(3) furnish receipts to all applicants for all payments made by such applicants in a form prescribed by the Board.

"(c) No employer seeking employees, and no person seeking employment, shall knowingly make any false statement or conceal any material fact for the purpose of obtaining employees, or employment by or through any private employment agency.

"(d) The Board, the Commissioner or his deputies may inspect the records of any licensee hereunder under reasonable circumstances during normal business hours and the Board shall have subpoena duces tecum powers for all records relating to the services of an agency performing services hereunder.

Injunction

"Sec. 14. Any person who shall operate a private employment agency, or who shall conduct an employment office, without first procuring such licenses as required and provided for in this Act may be enjoined from unlawfully pursuing such business or occupation, and the attorney general shall bring suit for such purpose in the name of the State of Texas in Travis County, and the district or county attorney of any county wherein such person engages in such business or conducts an employment office in violation of this Act is hereby authorized to maintain in the proper court of said county a suit in the name of the State of Texas to enjoin and prevent such person from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the attorney bringing suit to verify the pleadings or for the state to execute any bond as a condition precedent to the issuing of any injunction or restraining order hereunder.

Powers of the board

"Sec. 15. (a) The board is authorized to establish and promulgate a schedule of permissible maximum fees allowed to be charged to applicants by private employment agencies in the performance of their services.

"(b) The board may promulgate provisions for the issuance of a temporary license for operators for emergency situations and for transfer of a private employment agency license.

"(c) The board shall promulgate procedural rules and regulations only, consistent with the provisions of this Act, to govern the conduct of its business and proceedings. Notwithstanding any other provisions of this Act, the board shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or to make any rule or regulation which is unreasonable, arbitrary, capricious, illegal, or unnecessary.

"(d) All board meetings considering any of the matters contained in this section except under subsection (e) hereof shall be held only after notice of such meeting and the matters to be considered thereat have been given to every license holder by mail at least ten (10) days prior to the date of hearing.

"(e) Any license issued under this Act may be revoked by the board upon a finding by the board that the holder of such license has been

convicted of violating any of the laws of the United States or of this state involving moral turpitude or is guilty of violating any of the provisions of this act; provided, however, the holder of such license shall be entitled to notice, and such notice shall contain a statement which will accurately apprise such license holder of that of which he is accused and shall set the time for hearing not sooner than 30 days after the date of mailing of such notice, and such license holder shall be entitled to be present at the hearing and represented by an attorney. All notices under this section shall be mailed to the last known address of the license holder as reflected in the license holder's file by certified or registered mail.

Appeal

"Sec. 16. (a) Any person aggrieved by any decision of the board relating to the issuance, denial, revocation, or refusal to renew a license may, within 60 days after the date of the decision, appeal by filing a petition in the district court of the county of his residence. Any person aggrieved by any other decision of the board may, within 60 days after the date of the decision, appeal by filing a petition in a district court of Travis County. All such appeals shall be tried de novo, and the substantial evidence rule shall not apply.

"(b) Any person affected or aggrieved by any rule or regulation promulgated under this Act may sue in a district court of Travis County for a declaratory judgment as to the validity of the rule or regulation or the validity of its application to him. Process shall be served on the attorney general and the commissioner. The provisions of the Uniform Declaratory Judgments Act (Article 2524—1, Vernon's Texas Civil Statutes) apply to the extent they may be made applicable.

Penalty

"Sec. 17. From and after the effective date hereof it shall be unlawful for any person to engage in the private employment agency business as herein defined without having first complied with all of the requirements hereof and any person who violates or fails to so comply with the provisions hereof shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 or by imprisonment of not more than 6 months or by both such fine and imprisonment. Each day of such violation shall constitute a separate offense.

Disposition of fees

"Sec. 18. The commissioner shall deposit all money received by him from license fees under the provisions of this Act in the state treasury to the credit of the general revenue fund. All money derived from examination fees shall be deposited in a bank and shall be used only to cover the expense of preparing, giving, and grading examinations, as authorized by the board."

Sec. 2. In order to provide for an orderly transition from the old to the new regulatory scheme, Section 8, Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended, before the passage of this Act (Section 8, Article 5221a—6, Vernon's Texas Civil Statutes), remains in effect and prevails over conflicting or inconsistent provisions of this Act through December 31, 1969. Otherwise, this Act takes effect September 1, 1969.

Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force as provided by Section 2, and it is so enacted.

Passed by the House on April 29, 1969, by a non-record vote; House concurred in Senate amendments on May 28, 1969, by a non-record vote; passed by the Senate, as amended, on May 24, 1969, by a viva-voce vote.

Approved June 21, 1969.

Effective Sept. 1, 1969, 90 days after date of adjournment.